

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CORLIVEETHO McMILLIAN,	:	CIVIL ACTION NO. 1:14-CV-1000
	:	
Plaintiff,	:	(Chief Judge Conner)
	:	
v.	:	
	:	
GARY HOLLINGER,	:	
	:	
Defendant.	:	

ORDER

AND NOW, this 11th day of August, 2014, upon consideration of the report (Doc. 9) of Chief Magistrate Judge Martin C. Carlson, granting the motion (Doc. 6) for leave to proceed *in forma pauperis* filed by *pro se* plaintiff Corliveetho McMillian (“McMillian”) but recommending that the court dismiss McMillian’s complaint (Doc. 1) with prejudice for failure to state a meritorious claim, (see Doc. 9 at 11-17), wherein the magistrate judge concludes that McMillian has failed to state a claim for denial of access to the courts based upon defendant’s alleged November 2013 failure to file a brief on behalf of McMillian in the matter of McMillian v. Walsh, No. 1:11-cv-2223, (see id. at 11-15), and finds that, even assuming the truth of McMillian’s complaint, defendant’s alleged failure to file a brief was not the cause of McMillian’s underlying claims being dismissed, (id.), but that his claims were dismissed following a merits review by both a magistrate judge and the undersigned, (id. (citing see McMillian v. Walsh, No. 1:11-cv-2223, (Docs. 149, 153))), and after he was granted multiple opportunities and extensions of time to file substantive opposition papers by both the magistrate judge and the district court,

see McMillian v. Walsh, No. 1:11-cv-2223 (Docs. 139, 144, 151), and, following an independent review of the record, the court being in full agreement with the magistrate judge that McMillian has failed to state a claim against defendant for denial of access to the courts, for all of the reasons identified by the magistrate judge in his report, and also agreeing that amendment could not cure the deficiencies identified in the report because McMillian has not articulated a viable civil rights claim, see Fletcher-Hardee Corp. v. Pote Concrete Contractors, 482 F.3d 247, 253 (3d Cir. 2007) (observing that leave to amend should ordinarily be granted unless amendment would be futile or result in undue delay),¹ and noting that McMillian filed objections² (Doc. 12) to the report on June 27, 2014, and the court finding those objections to be without merit and squarely addressed by Judge Carlson's report, it is hereby ORDERED that:

¹ The magistrate judge's prediction that McMillian will be unable to cure the deficiencies in his complaint is affirmed by McMillian's amended civil rights complaint (Doc. 10) ostensibly filed in answer to the magistrate judge's report. The court has reviewed the proposed pleading and observes that its allegations are identical to—and thus suffer the same fate as—his initial pleading.

² When a party objects to a magistrate judge's report and recommendation, the district court performs a *de novo* review of the contested portions of the report. See Behar v. Pa. Dep't of Trans., 791 F. Supp. 2d 383, 389 (M.D. Pa. 2011) (citing Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989); 28 U.S.C. § 636(b)(1)(c)). In this regard, Local Rule of Court 72.3 requires written objections to "specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for those objections." LOCAL RULE OF COURT 72.3; also Behar, 791 F. Supp. 2d at 389 (citing Shields v. Astrue, Civ. No. 07-417, 2008 U.S. Dist. LEXIS 74519, at *6 (M.D. Pa. Sept. 8, 2008)).

1. The report (Doc. 9) of Chief Magistrate Judge Carlson is ADOPTED in its entirety.
2. Plaintiff's complaint (Doc. 1) is DISMISSED with prejudice.
3. The Clerk of Court is directed to CLOSE this case.
4. Any appeal from this order is deemed to be frivolous and not taken in good faith. See 28 U.S.C. § 1915(a)(3).

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania